IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1691 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AMBALAL SHANKERLAL SUTHAR

Versus

STATE OF GUJARAT

Appearance:

MR SHAILESH BRAHMBHATT for Petitioner

MR NIGAM SHUKLA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a Deputy Collector of the Revenue Department, Government of Gujarat, filed this writ petition before this Court challenging thereunder the order of the respondent dated 24th February 1983, annexure `D', under which he was ordered to be removed from the services by way of penalty.

2. The facts which are not in dispute are to be briefly stated:

For the delinquency pertaining to the year 1973 to 1976 when the petitioner was working as a Mamlatdar, he was served with a chargesheet vide memo dated 15.5.1980. The petitioner was due for retirement on 28th February 1983, the day on which he would have attained the age of superannuation. The petitioner, admittedly, has not given reply to the chargesheet and an exparte inquiry has been held against him as he has not participated therein and thereafter he was given a show cause notice as to why he should not be removed from services. Alongwith the show cause notice, it is not in dispute that inquiry report has also been sent to the petitioner. The petitioner submitted a detailed reply to the show cause notice. But the reply of the petitioner was not found satisfactory and under the order dated 24th February 1983, he was ordered to be removed from services.

3. The learned counsel for the petitioner, though made submissions challenging therein the procedure of inquiry itself, but thereafter he has confined himself to only submission that the penalty of removal which has been given to the petitioner is highly excessive, harsh and disproportionate to the guilt alleged against him. The learned counsel for the petitioner submitted that the petitioner was not chargesheeted with any of the allegations of misappropriation or embezzlement of Government money or misuse of the office by the petitioner for some extraneous or oblique consideration or some of the act or omissions or errors which resulted in financial loss to the Government or taking of any undue advantage for his own benefits. Regarding the charges which have been framed against the petitioner, the learned counsel for the petitioner contended that the charges attributed against him are for negligence in performance of his duty without any oblique motive or extraneous consideration. The petitioner was found to be guilty of negligence in performance of duties. It is only a case of negligence in performance of duty, the penalty of removal of petitioner from services just three days earlier to the date of actual retirement is harsh, excessive and disproportionate to the guilt. The learned counsel for the petitioner further contended that the petitioner has to its credit, 39 years' blotless service career. It is the only adversity in his service record throughout his service career. The chargesheet has been given to the petitioner after 4 to 7 years of the alleged

date of incidence and the Government has taken long period of three years to complete inquiry. Prior to giving of chargesheet and after the chargesheet, there was nothing adverse against the petitioner, that is to say, his service record earlier to chargesheet and after the chargesheet remained blotless.

4. These facts are not disputed by the respondent in reply to the Special Civil Application. The learned counsel for the respondent, contended that inquiry has been conducted against the petitioner fairly and reasonably and he has been offered opportunity to participate in inquiry but the petitioner himself has not availed of the same and as such, inquiry has been proceeded exparte. It is a case where the petitioner has been given ample opportunity to appear in the inquiry but he made no avail of the same. This conduct itself justifies the penalty of removal of the petitioner from services. From the fact that the petitioner has not repled to the chargesheet and he has, despite of giving him opportunity, not participated in inquiry gives out that he accepted the charges framed against him. Shri Shukla, learned counsel for the respondent further contended that what penalty should be given to a delinquent officer for proved misconduct is exclusively in discretion of the appointing or disciplinary authority and this Court may not interfere therewith. Relying on the decision of Supreme Court in the case of State Bank of India v. Samendra Kishore, reported in JT 1994(1) SC 217, the learned counsel for the respondent contended that this Court has no power of judicial review sitting under Article 226 of the Constitution of India in the matter of penalty to be given to the delinquent officer for proved misconduct.

5. I have given my thoughtful consideration to the contentions made by the learned counsel for the parties.

6. The fact that the petitioner has an unblemished record to his credit during his service period of 39 years except this adversity is not in dispute. It is also not in dispute that chargesheet for the incidences of the year 1973 to 1976 has been given to the petitioner in the year 1980. The charges are only of negligence in performance of duty. The petitioner has not been chargesheeted with any of allegations such as misappropriation or embezzlement or mis use of the office for his own benefits or for some extraneous or oblique motive. The Inquiry Officer has also found the petitioner to be guilty of negligence in performance of his duties. The order of punishment has been made in

this case on 24th February 1983 when the petitioner was due for retirement on reaching the age of superannuation on 28th February 1983, i.e. three or four days before the actual age of superannuation. Now the question arises for consideration is whether in presence of these admitted facts, penalty of removal given to the petitioner is harsh, excessive or disproportionate to the guilt found proved against him. Before considering this question, I will first like to deal with the contention made by the learned counsel for the respondent that this Court has no power of judicial review in the matter of punishment given to a delinquent by the Inquiry Officer or disciplinary authority in case of proved misconduct. Shri Shukla, learned counsel for the respondent has relied upon the decision of State Bank of India v. Samendra Kumar (supra), but reference may have to the later decision of the larger Bench of Supreme Court in the case of B.C. Chaturvedi v. Union of India, reported in (1995)6 SCC 749. The Apex Court, in the case of B.C. Chaturvedi v. Union of India (supra), has considered the question of power of judicial review of this Court under Article 226 of the Constitution of India with regard to interference with the punishment imposed by the disciplinary authority or the appellate authority in case of delinquent officer or employee. The Hon'ble Mr. Justice K. Ramaswamy, J, Mr. Justice B.P. Jeevan Reddy, J., and Mr. Justice B.L. Hansaria, speaking for the Court held in Para-17 and 18 at page 761 of the said judgment as under:

17. "The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution bench of this Court in State of Orissa v. Bidyabhushan Mohapatra (AIR 1963 SC 779) held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governer to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have

weighed with the authority in dismissing the public servant. The Court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in Union of India v. Sardar Bahadur ((1972) 4 SCC 618). It is true that in holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami v. State of T.N. (1989 Supp(1) SCC 686) a Bench of three judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India case ((1994) 2 SCC 537) where the Court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment."

18. "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment

> keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

7. The Hon'ble Mr. Justice Hansaria, concurring to the judgment held that in such cases, the Court is not empowered to interfere with the punishment imposed by the disciplinary authority. But it should be seen that the Supreme Court did not appear to have intended to laid down that in no case, the High Court has power to alter the penalty imposed by disciplinary or appellate authority.

8. Thus, from above citation it is clear that the Court said that a review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

9. It is therefore no more res-integra that in appropriate case where this Court finds on the facts of the case that the penalty given to the delinquent employee shocks conscience of this Court, interference can be made therein and this Court may either direct the authority to reconsider the matter or in exceptional and rare case where delay may cause injustice, substitute its own penalty. The contention raised by the learned

counsel for the respondent is therefore devoid of any substance.

10. From the above facts, it comes out that it is a case where the penalty of removal which has been given to the petitioner by disciplinary authority is certainly shocking the conscience of this Court. The petitioner has an unblemished service record and merely on some negligence made by him which has not resulted in any loss to the Government and no malafide are attributable to the petitioner, coupled with the fact that chargesheet was given after a considerable delay and inquiry has also taken long time, the penalty of removal is harsh and excessive. The petitioner is allowed to complete his full service period by the respondent and at the fag end of his retirement this penalty has been given The other point on which the penalty was given may not be relevant in other cases to hold the penalty to be harsh or excessive or disproportionate or shocking to the conscience of the Court, but in the present case, it has some relevance.

11. Now the only question which remains to be considered is whether the matter has to be sent back to the disciplinary authority for considering the question of substituting of some other penalty for the penalty of removal or this Court should go on this question and substitute the appropriate penalty. As observed in the case of B.C. Chaturvedi (supra), to shorten the litigation this Court may itself, in exceptional and rare cases, may impose appropriate punishment with cogent reasons in support thereof. I consider the present case to be an exceptional and rare case where this Court should substitute the penalty given to the delinquent and the reason is very obvious. The petitioner has already retired from the services in the year 1983 and by now he would have attained the age of about 70 years. The petitioner would not have been getting any pension and any further delay in the matter may result in further prejudice or hardship to the old man. At this age, the petitioner should get benefits immediately so that whatever further period for which he is to survive, may live peacefully and without facing any monetary hardship. In this age, if the person depends on other, even for his basic needs, it is certainly too harsh and intolerable and unbearable. A person has to face and undergo all these things if he is not having his own source of livelihood. The learned counsel for the respondent admits that compulsory retirement is one of the penalty provided under the disciplinary Rules. The learned counsel for the petitioner, on the other hand, submits

that in case the penalty of removal from service is substituted by penalty of compulsory retirement, the petitioner will not get gratuity. This Court is not concerned with what benefits the petitioner will get or not. But the proper punishment has to be given and taking into consideration the fact that the petitioner was a Mamlatdar at the relevant time and negligence attributed to him is there and may be taken seriously, and that he has already retired from services, the appropriate punishment to be substituted for removal from service, is compulsory retirement. This punishment is substituted for the reason already discussed above and as such need not be repeated again. This penalty is substituted from the date of removal of the petitioner from service.

12. In the result, this writ petition succeeds in part. Though the order to the extent holding the petitioner guilty of misconduct is maintained, the penalty of removal from the services given to the petitioner, is ordered to be substituted by the penalty of compulsory retirement. As a result of this compulsory retirement with effect from the date on which the petitioner has been relieved from services in pursuant to the impugned order, the petitioner shall be entitled for all the consequential benefits following therefrom. The respondent is directed to determine the consequential benefits for which the petitioner is entitled within a period of two months from the date of receipt of certified copy of this order and the papers may be sent to the Pension Department for fixation of pension. It is expected from the Pension Department to prepare PPO of the petitioner within a period of two months from the date of receipt of papers from the respondent, and pay all the arrears payable to the petitioner within a period of two months next and to further continue to pay monthly pension regularly. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)